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{ REPORT
106-180

THE EXPORT ADMINISTRATION
ACT OF 1999

R E P O R T

OF THE

COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1712

together with

ADDITIONAL VIEWS



OCTOBER 8, 1999.—Ordered to be printed

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OCTOBER 8, 1999.—Ordered to be printed

Mr. GRAMM, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1712]

The Committee on Banking, Housing, and Urban Affairs reports favorably an original bill entitled the “Export Administration Act of 1999,” a bill to reauthorize and update the lapsed Export Administration Act of 1979, and recommends that the bill, with an amendment, do pass.

INTRODUCTION

On September 23, 1999, the Senate Committee on Banking, Housing, and Urban Affairs met in legislative session and marked up and ordered to be reported an original bill to reauthorize the Export Administration Act of 1979, and for other purposes, with a recommendation that the bill do pass.

PURPOSE AND NEED FOR LEGISLATION

This Act reauthorizes and reforms the expired Export Administration Act of 1979 that authorized the President to control the export of dual-use items for national security, foreign policy, and short supply purposes. This Act recognizes and seeks to balance three important United States policy interests. First, the United States has an economic interest in promoting exports. Second, the United States has a national security interest in controlling the export of dual-use goods, services, and technologies (1) to limit the military potential of countries that threaten the United States or

its allies, (2) to impede the proliferation of weapons of mass destruction and the means to delivery them, and (3) to deter international terrorism. Third, the United States has a foreign policy interest in promoting international peace, stability, and respect for fundamental human rights through economic and diplomatic engagement and the selective application of economic sanctions including foreign policy export controls.

Since the Export Administration Act of 1979 expired on August 20, 1994, the President has continued export controls by issuing Executive Order 12924 pursuant to his authority under the International Emergency Economic Powers Act (IEEPA). IEEPA was not intended to allow the President to maintain export controls indefinitely in the absence of congressional authorization. Without reauthorization, the current export control regime may be vulnerable to a judicial challenge. This Act corrects this legally unsatisfactory situation by reauthorizing national security and foreign policy export controls. However, this Act does not authorize the President to impose short supply export controls.

HISTORY OF THE LEGISLATION

In order to prepare an original bill for consideration, the Committee and its Subcommittee on International Trade and Finance, held seven hearings.

At the first hearing on January 20, 1999, the Subcommittee on International Trade and Finance heard testimony from Hon. William Reinsch, Under Secretary of Export Administration of the Department of Commerce, on the reauthorization of the EAA.

At the second hearing on March 16, 1999, the Subcommittee heard testimony focusing on multilateral control regimes from Mr. John Barker, Deputy Assistant Secretary for Export Controls of the Department of State; Hon. R. Roger Majak, Assistant Secretary for Export Administration of the Department of Commerce; Ms. Patricia Dedik, Nuclear Transfer and Suppliers Policy Division, Director of the Department of Energy; Mr. Dan Hoydysh on behalf of the Computer Coalition for Responsible Exports; Mr. Paul Freedenberg on behalf of the Association for Manufacturing Technology; Mr. John Douglass, President of the Aerospace Industries Association; and Dr. Stephen Bryen, former Deputy Under Secretary of Defense for Trade Security Policy.

At the third hearing on April 14, 1999, the Subcommittee heard testimony relating to the export control process, once again from Hon. R. Roger Majak, accompanied by Ms. Carol Kalinoski, Chairwoman of the Department of Commerce Operating Committee; Mr. Dave Tarbell, Director for Technology Security at the Defense Threat Reduction Agency for the Department of Defense; Mr. James W. Jarrett, President, Intel China; Mr. Larry E. Christensen, Vice President, International Trade Content, Vastera, Inc; and Dr. Gary Milhollin, Director of the Wisconsin Project on Nuclear Arms Control.

At the fourth hearing on June 10, 1999, the Committee heard testimony relating to their Select Committee Report from Representative Christopher Cox, Chairman of the Select Committee on U.S. National Security and Military/Commercial Concerns with the Peoples Republic of China (the "Cox Commission"); and from Rep-

representative Norman D. Dicks, Ranking Member of the Select Committee.

At the fifth hearing on June 17, 1999, the Committee heard testimony on the EAA relating to emerging technologies from Mr. Frank Carlucci, Chairman, Nortel Networks; Mr. Tom Arnold, Chief Technology Officer of Cybersource, Inc; Mr. Michael Maibach, Vice President, Intel Corp; Mr. Eric Hirschhorn, Executive Secretary for the Industry Coalition on Technology Transfer; and Mr. Rhett Dawson, President, Information Technology Industry Council.

At the sixth hearing on June 23, 1999, the Committee heard comment from the Executive branch on the first discussion draft of the bill that was released on June 17, 1999. Testimony was received from Hon. William Reinsch, Under Secretary for Export Administration; Hon. John Hamre, Deputy Secretary of Defense; Hon. James Schroeder, Deputy Under Secretary of Agriculture for Farm and Foreign Agriculture Services; Hon. Rose Gottemoeller, Assistant Secretary of Energy for Nonproliferation and National Security; and Mr. John Barker, Deputy Assistant Secretary of State for Nonproliferation Controls.

At the seventh and final hearing on June 24, 1999, the Committee heard private sector views on the first discussion draft. Testimony was heard from Mr. John Douglass, President, Aerospace Industries Association; Mr. Kyle Seymour, President, Cincinnati Machine Co; Mr. Andrew Whisenhunt, President, Arkansas Farm Bureau; Ms. Karen Murphy, Director of Global Customs and Export Compliance, Applied Materials Corp; Dr. Richard Cupitt, Associate Director, Center for International Trade and Security, University of Georgia; Dr. Stephen Bryen, former Deputy Under Secretary of Defense for Trade Security Policy, and Mr. Craig Elwell of the Congressional Research Service.

In addition to the seven hearings, the Committee held frequent meetings with all interested parties and received written comments from many others. Efforts were made to ensure all interested parties would be heard. Additional comments, suggestions, and assistance in considering and evaluating the legislation were received from the Departments of Commerce, Defense, State, Justice, Energy, and Agriculture, as well as the National Security Agency and National Security Counsel.

The Committee released two staff discussion drafts of the bill, the first on June 17, 1999 and the second on August 9, 1999. The Committee released an original committee print on September 20, 1999.

The Committee then voted 20-0 to report the bill, with one amendment, to the Senate for consideration.

BACKGROUND AND KEY PROVISIONS

The United States faces a different world since the last major revision of the Export Administration Act in 1979. This Act has been updated to reflect the changes since the end of the Cold War and the emergence of new threats, as well as the expansion of the global economy and spread of technology. This Act seeks to maintain a balance between national security interests and commercial interests.

National security export controls under the 1979 Act sought to prevent exports of dual-use goods, services, and technologies to the Soviet bloc from the United States or its allies through the Coordinating Committee on Multilateral Export Controls (CoCom). In the intervening years, the Soviet Union dissolved and the Warsaw Pact disbanded. In 1994, the United States and its allies dissolved CoCom, under which the United States or any other country could exercise a unilateral veto over dual-use exports. A less stringent Wassenaar Arrangement, which only requires post-export notification of sales of controlled items by member countries, was subsequently implemented in 1996. Although new security threats have emerged, the legal structure for U.S. national security export controls under the 1979 Act continues to focus on the CoCom and Soviet bloc. This Act seeks to update national security export controls to reflect the current world situation.

In its effort to improve the multilateral regimes in which we participate, the U.S. must negotiate from a leadership position, an aspect of which is a firm statutory foundation for export control policy. During testimony on June 24, 1999, Dr. Richard T. Cupitt of the Center for International Trade and Security pointed out, "The inability of the U.S. government to craft a firm legislative foundation for its own controls on the export of dual-use goods, technologies, and services over the last decade, however, has compromised U.S. leadership initiatives."¹

Not only have the threats to national security changed in the last two decades, but the United States' economy is far more dependent on international trade and investment today than in 1979. The United States' trade with the rest of the world has climbed from \$481.4 billion, or 18.8 percent of gross domestic product (GDP), in 1979 to \$2,069.2 billion, or 24.3 percent of GDP, in 1998.

Risk management

The Act focuses national security export controls on those items and destinations which the U.S. determines as the greatest risk to U.S. national security. The risk management processes established by the Act include conducting risk analysis for items proposed for control and establishing a country tier system based on similar analysis. The country tier system seeks to characterize items and countries according to their threat to national security.

Foreign availability

Trade and investment liberalization under the North American Free Trade Agreement, the Uruguay Round Agreements and other international treaties have fundamentally changed production locations and processes. Fewer goods, services, and technologies originate entirely within the United States. Today, many dual-use goods, services, and technologies can be obtained through firms outside of the United States. Firms in newly industrialized countries that did not participate in CoCom now supply many dual-use goods, services, and technology. Moreover, national discretion in application of national security export controls among the

¹Hearing on the reauthorization of the Export Administration Act before the Senate Committee on Banking, Housing, and Urban Affairs, June 24, 1999.

Wassenaar members allows countries to undercut the effectiveness of such export controls. Both of these changes can place American firms at unfair competitive disadvantage with their foreign rivals. The 1979 Act does not address the issue of foreign availability in a manner relevant to the world today. It assumes the United States can effectively control the export of dual-use goods, services, or technologies either because the United States is the sole supplier, or all suppliers are in CoCom countries. This Act makes changes that will strengthen the foreign availability exemption from national security export controls

Mass market

The nature of dual-use technology has also changed since 1979, primarily because of the computer revolution. In 1979, many dual-use goods were produced in small numbers. Today, many mass market goods such as personal computers have dual-use applications. Even though such mass market goods may have military applications, they are produced in the millions and sold through a variety of retail outlets. Recognizing these technological changes, this Act creates a new mass market exemption from national security controls.

Foreign policy disciplines

This Act institutes new disciplines on foreign policy export controls to ensure such controls maximize the general welfare of the United States. The Act does not forbid all foreign policy export controls, but places certain limitations on the use of such controls to increase their effectiveness.

Agriculture, medicine and medical supplies exemption

Trade prohibitions, through agricultural economic sanction policy, hurt United States family farmers and ranchers, undermine our reputation as a reliable supplier, and do little to alter the behavior of the countries targeted by sanctions. This Act eliminates export controls on agricultural commodities, medicine, and medical supplies except for a limited number of such goods subject to national security export controls (e.g., for biological or chemical weapons purposes) and for exports to countries subject to an embargo under the Trading with the Enemy Act (currently only North Korea and Cuba).

Enhanced enforcement

Enhanced enforcement was a central theme of the Cox Committee² recommendations and is a key aspect of this Act. It includes a requirement for licensing officials to notify enforcement officers regarding those license approvals that warrant additional scrutiny. It increases penalties and strengthens the post shipment verification provisions. Finally, the Act includes several new mechanisms designed to enhance enforcement. The "Patriot" provision allows informants to report violations and receive a reward in those cases that result in convictions. Funding for a program to educate

²Report of the Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China, May 25, 1999.

freight forwarders, among some of the most important players in the export process, is authorized to increase the public awareness of the requirements of the export control law.

Strengthening multilateral regimes

Since the U.S. is sometimes not the sole source for certain technologies, the need for multilateral agreement among supplier nations is critical to the success of export control mechanisms. The U.S. should take steps to improve the effectiveness and transparency of the controls, including encouraging full membership, working toward a common list of items and countries of concern, harmonization of license procedures, establishment of a “no undercut” policy, and working toward a common standard in enforcement. Such features will ensure more predictable competitive opportunities for U.S. exporters. This Act emphasizes the importance of these efforts.

Sanctions

The Act continues to authorize sanctions against those who endanger U.S. security interests. For those entities within export control regime member countries who violate the provisions of the regime, the Act provides that the U.S. may impose certain trade sanctions on the violators, unless their own country’s government takes adequate action regarding the violations. For entities that contribute to the proliferation of missiles and missile delivery systems, or chemical and biological weapons, the bill mandates a U.S. sanction in response.

The Cox Committee and Deutch Commission

About the time the Committee began its research for this Act, the Cox Committee was finishing its work. The Committee released a classified report documenting its findings in January, 1999, and an unclassified version in April, 1999. The bipartisan Committee’s report included recommendations to improve current export control practices. All but two of the recommendations are included in this bill. Of the two which are not included in this bill, one recommended unlimited amounts of time to review “critical” case applications. This bill limits the review period of all cases, but allows an agency to request additional information at any time. It also allows an exporter to authorize additional time for review in order to avoid a potential license denial. The other recommendation was partially included. The Cox Committee recommended that post-shipment verifications (PSVs) be conducted without prior notice. This bill significantly strengthens the PSV provisions, but the Committee believes that prior notice for PSVs is necessary due to national sovereignty concerns.

The Deutch Commission³ also concluded its work in July, 1999, and its report included four primary recommendations on export controls. Three of these recommendations have been included in this bill. The fourth recommendation suggested a study to consider harmonizing controls under the Export Administration Act and

³ Report from the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction, July 14, 1999.

Arms Export Control Act. This goal is consistent with the intent of the Committee.

PURPOSE AND SCOPE OF THE LEGISLATION

Title I—General authority

Title I provides general authorization for the conduct of United States export control policy. As has been the practice under previous versions of the Export Administration Act, the power to establish and conduct export control policy, under the statutory direction and restrictions imposed by the Act, is vested in the President.

The President may delegate the authority granted under the Act, subject to the provisions of the Act, to Federal departments, agencies, and officials he considers appropriate. However, the President may only delegate this authority to officials of departments or agencies, the heads of which are appointed by the President and confirmed by the Senate. The Committee notes that this is intended to include officials serving in such a post under a recess appointment by the President. The President also may not delegate his power and authority to overrule or modify decisions made under the Act by the Secretaries of Commerce, State, or Defense.

As a basis for the conduct of export control policy, the Title directs the Secretary of Commerce to establish and maintain a Commerce Control List (the “Control List”). This is a list of items that are subject to export controls. The Secretary may require a license, other authorization, or other requirement for the export of any item on the Control List. The bill establishes several forms of licensing and other authorization. Individual licenses may be required for specific exports. Multiple licenses may be required for multiple exports of an item, instead of an individual license for each. Notification to the Secretary of the intent to export an item may be required in lieu of a license. The Secretary may also grant a license exception, which is the authority to export an item on the Control List without license or notification.

The Committee intends to ensure that exporters will be able to provide replacement parts for their exports unless the Secretary determines that there is a reason not to do so. To that end, the Title provides that for after-market service or replacement parts provided on a one-for-one basis for a lawfully exported item, a license or other authorization will not be required. Exceptions to this provision are authorized either when the Secretary determines that a license or other authorization is necessary, or when the after-market or replacement part or service would enhance the capabilities of an item that gave rise to control of that item in the first place.

The Committee also intends that exporters be able to export technologies incidental to an exported item, so long as they relate to the installation and operation of the item, and do not enhance any capability that led to the item’s inclusion on the Control List. The Act therefore provides that a license for an export of an item includes the export of incidental technology, but only so long as that technology does not exceed the minimum needed to install, maintain, repair, inspect, operate or use the item.

In addition, the Secretary will consult with a broad array of interested parties, particularly when it comes to decisions on the mass market or foreign availability status of items on the Control List. The Act also authorizes the Secretary to set up Export Control Advisory Committees. These panels are to be comprised of experts from industry and government. These panels may be established on the Secretary's own initiative or at the request of industry representatives. The Department is also to inform the public about changes in export policy, procedures, and regulations.

The Act provides that the Secretary may create regulations to implement the Act's provisions regarding the Control List, export licenses and other authorizations and requirements, and any other provisions of the Act, and states specifically that no fees may be charged in connection with an export license application.

Finally, the Act reaffirms that U.S. companies and individuals have a right to export.

Title II—National security export controls: Subtitle A

Title II authorizes the President to impose export controls for national security purposes. Subtitle A of this title details the authorities and procedures necessary to implement national security export controls. The authority is vested in the President and is exercised by the Secretary of Commerce, in consultation with the Secretary of Defense, the intelligence agencies, and other appropriate departments and agencies. This grant of authority is identical to the Export Administration Act of 1979, with one exception. The Committee believes that the U.S. intelligence community should play a greater role in developing and implementing export control policy. Therefore, a specific reference is made to intelligence agencies in Section 201.

The 1979 Act contained a series of policy declarations to guide the President in imposing export controls for national security reasons. This Act, instead, enumerates the purposes for imposing national security export controls in Section 201. The Committee retains the purpose set forth in the 1979 Act: To restrict the export of items that would contribute to the military potential of countries so as to prove detrimental to the national security of the United States. The purposes are also expanded in two important areas. First, the Committee authorizes national security export controls to stem the proliferation of weapons of mass destruction and the means to deliver them. Second, national security export controls are authorized to deter acts of international terrorism.

Export controls are authorized based on the end use or end user of an item, when an item could materially contribute to the proliferation of weapons of mass destruction or the means to deliver them. The Committee intends this provision to serve as a means to control items that may not be listed on the Commerce Control List, but should be controlled due to the intended recipient or anticipated use of the item.

Section 202 authorizes the Secretary of Commerce to establish and maintain a National Security Control List. Items to be controlled are identified and placed on the list with the concurrence of the Secretary of Defense, and in consultation with other appropriate agencies. This process is essentially identical to that con-

tained in the 1979 Act. Since the Committee expects continuity in the process of placing items on the National Security Control List, it is intended that the agencies continue to utilize the National Security Control List in existence at the date of enactment of this Act, until it can be modified in accordance with this section. The Committee also provides guidance, in the form of risk factors, in determining which items are to be placed on the control list.

The Committee seeks to increase the transparency and predictability of the export control system by creating a country tiering mechanism in Section 203. This section requires the President to establish a tiering system consisting of five tiers. Each country will be assigned to a tier for each controlled item, or group of controlled items. Countries that represent the lowest risk of diversion or misuse of an item will be assigned to Tier 1. Countries representing the highest risk will be assigned to Tier 5. Within this framework, the Committee intends that the President have a great deal of flexibility in assigning items to the tiers. Items may be assigned individually, within groups, or in any other way the President deems appropriate.

The tiering system will provide license applicants with greater knowledge of the likelihood of their license applications being approved. Furthermore, the Committee expects that the tiering system will provide an incentive for countries to reduce the incidents of misuse or diversion of controlled items in order to be assigned to a lower tier.

Section 204 attempts to codify current regulatory practice by setting out certain limitations on controlling the export of items containing controlled parts or components and the reexport of foreign-made items incorporating controlled parts or components. Controls may not be placed on an item solely because the item contains parts or components subject to controls, if the parts or components are essential to the functioning of the item, are customarily included in the sales of the item, and comprise 25 percent or less of the total value of the item.

Section 204(b) provides that no authority or permission may be required to reexport to a country (other than one designated under section 310) an item produced in a foreign country that contains controlled U.S. parts or components, if the parts or components comprise 25 percent or less than the total value of the item. For reexport to those countries designated under Section 310, the value threshold is reduced to 10 percent.

Section 205 requires the Secretary of Commerce to establish a process for interested persons to petition to change the status of an item on the Commerce Control List. The Committee believes that persons outside of the government may have information relevant to whether an item should remain on the Control List. This process will ensure such information is transmitted to and considered by the Secretary.

Subtitle B: Foreign availability and mass market status

The Committee has concluded that the effectiveness of U.S. export controls is increased if items that are available from foreign sources or are available on a mass-market basis are exempt from control. Unilateral controls on U.S. exports are less likely to

achieve their intended results than controls imposed on a multilateral basis. Controlling items determined to have foreign availability status or mass-market status will likely decrease the competitiveness of U.S. exporters. John Douglass, President of the Aerospace Industries Association, supports the mass market provision:

Except for very unusual circumstances, mostly related to lethal military equipment, U.S. companies should be allowed to sell products that are, or are expected to be, available from other sources. Shifting the source of supply does not punish the importer; it punishes the exporter.⁴

The U.S. export control regime should focus on controlling those items that pose the greatest risk to national security. The Committee believes there is little national security benefit derived from controlling U.S. items if substantially identical items can be acquired through another source or if such items are produced and available for sale in large volume to multiple purchasers. Therefore, the U.S. export control system must include effective foreign availability and mass-market mechanisms, whereby those items which have foreign availability or mass-market status would be decontrolled (i.e., no license would be required for their export). Foreign availability and mass-market status would only apply to items controlled for national security purposes. Items controlled for foreign policy purposes would be exempt from foreign availability and mass-market status, in order to allow the U.S. to sanction a country or end-user.

The Act states that an item has foreign availability status if it is: (1) available from sources outside the U.S., including countries that participate with the U.S. in multilateral export controls; (2) at a price that is not excessive when compared to the price at which a controlled country could acquire such item; and (3) in sufficient quantity that renders control ineffective. This foreign availability definition modifies that contained in the Export Administration Act of 1979 to address problems cited by industry.

This Act recognizes the necessity of a mass-market exemption from export controls. Mass-market items are virtually uncontrollable by the nature of their wide distribution channels, massive volumes and general purposes, giving such items characteristics not unlike those of traditional commodities. Jim Jarrett, President of Intel China, summed up the reasoning for mass-market exemptions from controls:

A major step in achieving a refocusing of export controls is the removal of restrictions on mass market products. Mass market products, by their very nature, are not susceptible to effective control and can contribute to strategic military capability in only the most generalized way. They are sold in very high volumes through a multitude of dis-

⁴Hearing on the reauthorization of the Export Administration Act before the Senate Subcommittee on International Trade and Finance of the Senate Banking, Housing, and Urban Affairs Committee, June 24, 1999.

tribution channels and are not uniquely designed for individual applications.⁵

The Export Administration Act of 1999 considers an item to have mass market status if it: (1) is produced and available for sale in large volume to multiple potential purchasers; (2) is widely distributed through normal commercial channels; (3) is conducive to shipping by generally accepted commercial means; and (4) may be used for its intended purpose without substantial and specialized service.

In order to keep pace with changing technology and markets, the Secretary's determination should take into consideration developing technological and market trends. This approach should be consistent with past practice in connection with, for example, the establishment of new export control thresholds for microprocessors and computers. A determination of mass market status shall apply to all items that are substantially identical or directly competitive. This action is necessary to avoid discriminatory treatment and disrupting the competitive balance among products or technology.

While individual or particular items are eligible for mass market status, the initial determination should wherever possible be made for the generic class or category of items as is the current practice with respect to the Commodity Control List. Thus, the volume calculations should include production or sales of all items that are either substantially identical or directly competitive to the item under assessment. These generally equivalent items would qualify for mass market status even though individually they may not otherwise meet the production or sales volumes required for mass market status.

The Committee concluded that there may be times when an item determined to have mass-market or foreign availability status should be controlled because of a threat that item may pose to the national security of the United States. These instances are expected to be relatively rare, however. The bill allows the President to "set-aside" mass-market and foreign availability determinations in certain circumstances. The presidential set-aside is to be reviewed every six months, with a report sent to Congress for each set-aside. The review and reporting requirements are intended to promote accountability, discipline and transparency in the decision-making process. The set-aside of a foreign availability determination is to expire 18 months after such determination, unless the President has been able to achieve an agreement to eliminate the foreign availability of that item. The Committee believes that if the President cannot convince other suppliers of that item to impose export controls on that item within an 18-month period, multilateral controls for that item are not likely to occur. The set-aside of a mass-market determination does not automatically expire; however, the President must still review the set-aside every six months.

Given the rapid changes in technology and the importance of technology to the U.S. economy, the Committee believes a single of-

⁵Hearing on the reauthorization of the Export Administration Act before the Senate Subcommittee on International Trade and Finance of the Senate Banking, Housing, and Urban Affairs Committee, April 14, 1999.

Office is necessary to track worldwide technological developments in industry sectors critical to the national security interests of the U.S. Therefore, the Office of Technology Evaluation (OTE) is to be established in the Department of Commerce to facilitate technical studies of foreign availability and mass-market determinations, as well as evaluations of multilateral export control regimes, other government export control policies and U.S. industrial sectors critical to the U.S. defense industrial base.

Title III—Foreign policy export controls

Title III authorizes the imposition of export controls for foreign policy purposes. Since most foreign policy controls are unilateral in nature, and because the Committee believes that multilateral controls are preferred to unilateral controls, Title III imposes certain disciplines on the imposition of foreign policy controls.

The disciplines detailed in Title III track those set forth in Section 6 of the Export Administration Act of 1979 in most respects. However, there is at least one significant difference: This Act narrows the scope of purposes for which foreign policy controls can be imposed, most notably by moving to Title II the authorization to impose export controls to stem the proliferation of weapons of mass destruction, chemical and biological weapons, and the means to deliver them.

Title III specifically authorizes export controls to be imposed to promote the foreign policy objectives of the United States; to promote international peace, stability, and respect for fundamental human rights; and to deter and punish acts of international terrorism.

Section 303 provides criteria to guide the President in imposing export controls for foreign policy purposes, which build on the criteria set forth in Section 6(b) of the 1979 Act. An export control imposed under this title must have a specific objective; have an objective standard for evaluating its success; include an assessment by the President that the control is likely to achieve its objective and that the achievement of the objective outweighs any potential cost to other U.S. interests; be targeted narrowly; and seek to minimize the impact on humanitarian activities of the United States in the country subject to the control.

In order to impose controls, the President must follow the procedures outlined in the title. Both the 1979 Act and Title III of this bill require the President to consult with Congress, other countries, and industry prior to imposing a foreign policy export control. Both Acts also require a report to be filed with Congress.

Title III, however, imposes an additional requirement. Section 302 provides that the President must publish notice in the Federal Register 45 days prior, and solicit public comment at least 30 days, prior to imposition of a control. The Committee believes this requirement will increase transparency in the process of imposing foreign policy controls and allow all interested parties to provide information relating to any potential impact the control may have on them. Title III also allows the President to defer compliance with this requirement, and the report to Congress required under Section 304, if deferral is in the national interest and the President

satisfies these requirements within 60 days after the date the control is imposed.

Title III also addresses existing foreign policy export controls. The President is required to review all existing controls by February 1, 2002 and every two years thereafter (the “renewal year”). Any control not specifically renewed, by report to Congress, will expire on March 31 of the renewal year. While the 1979 Act terminated foreign policy controls one year after imposition, unless extended by the President, the Committee believes the additional requirements imposed on the President in Title III justify a two-year review and renewal period.

Finally, Section 301(c) broadens the prohibition on controlling exports from a foreign country of an item produced in such foreign country, containing parts or components produced in the United States. Section 301(d) recodifies, to a large extent, Section 6(p) of the 1979 Act relating to contract sanctity. Section 309 authorizes the President to impose controls on exports in order to comply with international obligations, notwithstanding any other provision of the Act, which is based on a similar provision in Section 6(i) of the 1979 Act. Section 310 recodifies Section 6(j) of the 1979 Act relating to the designation of countries determined to be supporters of international terrorism and the requirement that exports to such countries be licensed.

Title IV—Exemptions for agricultural commodities, medicine and medical supplies

Title IV restricts the use of foreign policy export controls on agricultural commodities, medicine, or medical supplies. The Committee intends that the terms “medicine” and “medical supplies” be interpreted broadly, consistent with the humanitarian objectives of this Title. This provision will not only benefit the economic position of people in other countries, but also the agricultural economy in the United States.

The Committee specifically exempts nations subject to the Trading with the Enemy Act and items that are controlled for national security purpose from this prohibition of sanctions.

Title V—Procedures for export licenses and interagency dispute resolution

Transparency and accountability are necessary components of the export license process. Government must avoid unreasonable processing delays so U.S. exporters are not disadvantaged in the global marketplace. Sharing information with those departments or agencies which have an export control mandate is vital to making well-informed license decisions. Focusing attention on those licenses which involve significant technologies and end-users of concern will spare exporters lengthy and costly delays for exports of less sensitive items.

In order to ensure that export license decisions are consistent with U.S. national security and foreign policy goals, the bill establishes a risk management framework. Criteria for the evaluation of export license applications include risk factors such as the characteristics of the item, the threat to national security from misuse, and the risk of diversion. Reviewing the end-user and end-use of

a proposed export is an important part of the analysis and will focus attention on those applications which involve specific end-users or end-uses of concern. Mitigating factors such as changing the characteristics of an item, after-market monitoring and post-shipment verification are to be considered in an effort to assess what combination of circumstances might permit the export without impinging upon national security or foreign policy objectives.

The Department of Commerce will have nine days to ensure an application for export license is complete and verify that a license is required for the item. The application, all supporting documents, and Commerce's analysis of the proposed export must be referred to the Department of Defense and other appropriate departments and agencies (the "referral agencies") within the nine-day time period. The referral agencies will have 25 days to consider the application and forward a recommendation to Commerce. If any agency does not respond within the 25 days, it is presumed they have no objection to the issuance of the license. The time limit for inter-agency review was reduced to 25 days from the 30 days allowed in Executive Order 12981 to ensure more timely results for exporters.

Commerce or any other department or agency may request a prelicense check in order to verify the identity and reliability of the end-user. The prelicense check must be initiated within five days of the request for such a check and the analysis of the Secretary must be completed within five days of completion of the check.

At the end of 25 days (excluding exceptions from the required time periods), Commerce will either issue the license, notify the applicant of the intent to deny the license, or notify the applicant the application is being referred to the interagency dispute resolution process. If an export license application is to be denied, Commerce will inform the applicant of the determination to deny, the specific basis for the denial and what modifications to the proposed export might permit the export to be approved. The applicant will have 20 days in which to respond to a proposed denial, thus allowing the applicant an opportunity to address or correct the reasons for denial. If an applicant wishes to withdraw an application at any time, the withdrawal must be in writing.

An effective interagency dispute resolution process will ensure that (1) a wide range of facts and opinions are brought to bear on each case; (2) the system encourages decision rather than indecision; and (3) agencies are allowed to escalate cases to the highest levels of government.⁶

If the agencies do not agree on approval or denial of an export license application, the application will be referred to the initial level of review within the interagency dispute resolution process. The Secretary of Commerce will establish an interagency committee for this review and will designate the chair of the committee. The chair will consider the positions of the reviewing agencies and will document the agencies' positions in the minutes of the committee. After such consideration, the chair will make a decision on the license application. Documenting the recommendations of

⁶Hearing on the reauthorization of the Export Administration Act before the Subcommittee on International Trade and Finance, of the Senate Banking, Housing, and Urban Affairs Committee, April 14, 1999, testimony of R. Roger Majak, Assistant Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce.

the reviewing agencies and the chair's decision permits the agencies to go "on the record" with their votes and also creates accountability for the chair's decision. The decision of the chair may be appealed by the representative of the dissenting agency. Additional levels of review shall provide for decision-making based on a majority vote.

The entire interagency process is to be completed or referred to the President not later than 90 days after the date of initial referral for interagency review, consistent with Executive Order 12981. Once a final decision is made under the interagency dispute resolution process, Commerce shall issue the license or notify the applicant of the intention to deny the application.

An applicant may file a petition with the Secretary requesting compliance with the time limits established for license processing. In response, the Secretary shall act immediately to correct the situation causing the delay and so notify the applicant. If, after 20 days, the processing of the application is still not in conformance with the time limits set forth in this section, the applicant may pursue action in U.S. district court to compel compliance with the time limits.

When the Department of Commerce receives a written request for classification of a controlled item, Commerce will notify the Department of Defense, and other agencies as appropriate. The Committee intends that other agencies have input as to which agency has jurisdiction over the item, and whether a license is required. Commerce will have 14 days to issue the classification. If the Department of Commerce receives a written request for information under the Act, Commerce will have 30 days in which to respond.

Title VI—International arrangements; foreign boycotts; sanctions; and enforcement

The United States should continue to exercise its leadership in export controls by its participation in multilateral export control regimes. An annual report to Congress is required wherein the President will evaluate the effectiveness of the multilateral export control regimes and make an assessment of the steps taken by the U.S. to strengthen the regimes.

With respect to foreign boycotts, the Act generally recodifies Section 8 of the expired Export Administration Act of 1979. Enforcement of the antiboycott provisions are strengthened by making penalties for violations of this section the same as for export control violations.

The success of export control efforts depends upon vigorous enforcement of the law. This reauthorization includes several new initiatives to strengthen enforcement. Penalties for violations of this Act, criminal and civil, are significantly enhanced. Continuing the Export Administration Regulations under IEEPA severely limits the criminal fines for violations. The need for tougher penalties was stressed by a variety of witnesses before the Committee:

For many potential violators, the monetary penalties associated with the old EAA posed no compelling reason for compliance. [S]harply increasing the penalties for viola-

tions . . . helps implement the first element of a “higher fences, fewer goods” strategy.⁷

The Deutch Commission strongly supported enhanced penalties as a deterrent to would-be violators, stating that under current law, “[A]n export control violator could view the risk and burden of penalty for a violation as low enough to be merely a “cost of doing business,” to be balanced against the revenue received from an illegal transaction.”⁸

Individuals will be subject to a criminal fine of up to 10 times the value of the exports or \$1,000,000, whichever is greater; a prison term of up to 10 years; or both. Imprisonment may be increased to life imprisonment for multiple violations or aggravated circumstances. Persons other than individuals (i.e., corporations) shall be fined up to 10 times the value of the export or \$10,000,000, whichever is greater. In addition to or in lieu of criminal penalties, the Secretary of Commerce may impose a civil fine of up to \$1,000,000 for each violation of this act, deny export privileges of the person, or exclude the person from practice before the Department of Commerce.

The Secretary of Commerce may deny for up to 10 years the export privileges of any person convicted of a violation of U.S. export control laws. In order to increase the effectiveness of the overall U.S. export control effort, those convicted of other criminal statutes which prohibit trafficking in weapons of mass destruction or lesser offenses in connection with actions falling under this Act are also subject to denial of export privileges. Those convicted of violations of this Act will find the property they exported and the fruits and instrumentalities of their crime subject to forfeiture.

The statute of limitations for violations of this Act is established as five years, but sets forth time periods during which the statute of limitations is tolled. In a case where criminal prosecution is pursued, the statute for bringing an administrative proceeding is tolled from the date of indictment until 6 months after the date the criminal action is concluded. This will preserve the government’s civil recourse against a violator without endangering the pursuit of a criminal prosecution.

The U.S. may impose sanctions on a foreign person found to be in violation of export controls pursuant to a multilateral regime. This Act largely recodifies Sections 11A through 11C of the expired Export Administration Act of 1979, with changes to remove references to the former Soviet Union and the former Coordinating Committee. In addition, Sections 11A (i) and (k) pertaining to compensation for diversion of militarily critical technologies and damages for violations have been removed.

Enforcement is strengthened further through new programs of the Office of Export Enforcement. The Office of Export Enforcement is authorized to conduct undercover investigations in furtherance of its responsibility to enforce the Export Administration Act. Procedures for the use of funds to support these undercover inves-

⁷Hearing on the reauthorization of the Export Administration Act before the Senate Committee on Banking, Housing, and Urban Affairs, June 24, 1999, testimony of Dr. Richard T. Cupitt, Associate Director, Center for International Trade and Security, University of Georgia.

⁸Report from the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction, July 1999.

tigations are established and reporting requirements for such undercover investigations are set forth. Violations of the Export Administration Act are made predicate offenses for wiretap authority. A "Patriot" provision is established which permits a person providing information about a violation of the Act, leading to the recovery of a criminal or civil penalty, to be awarded up to 25% of the penalty recovered.

Post shipment verifications (PSV) will continue to be an important part of the enforcement effort. Such verifications will focus on exports involving the greatest risk to national security including, but not limited to, exports of high performance computers. Section 1213 of the National Defense Authorization Act for Fiscal Year 1998 is repealed in order to allow the Secretary the discretion to commit Commerce's limited resources to the conduct of PSVs for the technologies and end-users of greatest concern.

Currently, the Office of Export Enforcement has only one investigator posted overseas. This is inadequate to meet the need for post-shipment verifications, a significant part of Commerce's compliance program. In support of this effort, the sum of \$4,500,000 is authorized to hire and place 10 Office of Export Enforcement investigators in China, Russia, Hong Kong, India, Singapore, Egypt, Taiwan and other overseas posts as appropriate.

To strengthen compliance with these PSVs, the Secretary may take action against those who refuse to allow such checks. If an end-user refuses to allow a post-shipment verification, export licenses for controlled items to this end user will be denied until such time as the post-shipment verification is conducted. If a country refuses to allow a post-shipment verification, the Secretary may deny the export of substantially identical or directly competitive items to all end-users in that country until such time as the country allows the post-shipment verification.

The Department of Commerce is authorized \$3,500,000 to hire additional staff to work with U.S. freight forwarders, important partners in exporting U.S. goods, to develop and implement a "best practices" program. This voluntary program will ensure that freight forwarders are facilitating exports in compliance the provisions of this Act.

Procedures for administrative actions, including the imposition of Temporary Denial Orders, are established. A Temporary Denial Order (TDO) is sought when there is reasonable cause to believe that a person is engaging in or is about to engage in activity which would constitute a violation of the Act. In cases where a criminal indictment for violations of this Act or related statutes has been returned, there may be considerable concern on the part of the government that the person could continue to engage in illegal export activity. Therefore, criminal indictment is considered grounds for the issuance of a TDO.

To assist further the Department of Commerce in the administration of its responsibilities in processing export licenses and maintaining records, the sum of \$5,000,000 is authorized for the acquisition of a new computer system for export licensing and enforcement.

Title VII—Export control authority and regulations

Title VII authorizes certain officials to implement the authorities granted under this Act. The title provides for the delegation of authority, not otherwise reserved for the President, to the Secretary of Commerce and, subsequently, to the Under Secretary of Commerce for Export Administration. The title also authorizes the appointment of such Under Secretary. In addition, the title authorizes the appointment of two Assistant Secretaries to assist the Secretary and Under Secretary in carrying out the authorities of the Act. The Committee intends this grant of authority to reflect the organizational structure currently in place at the Department of Commerce.

Title VII also authorizes the President and Secretary of Commerce to issue regulations as necessary to carry out the Act and requires notification to Congress of amendments to such regulations.

The Committee seeks to recodify the 1979 Act provisions relating to confidentiality of information, the availability of information to Congress and the General Accounting Office, and the prohibition on disclosing certain information. The Act increases the penalties that can be imposed for disclosure of confidential information. If an officer or other employee of the U.S. government knowingly discloses confidential information in violation of this Act, such person can be fined up to \$50,000, and imprisoned not more than one year, for each violation. The Secretary is authorized to impose civil penalties of not more than \$5,000 for persons who otherwise disclose information in violation of the Act.

Title VIII—Miscellaneous provisions

The Committee recognizes the importance of keeping Congress fully informed about the conduct of export control policy. To that end, this Title requires the Secretary to report to Congress regarding export controls on an annual basis. The report is to include: a description of the implementation of the Act, including regulations issued, organizational changes, and delegations of Presidential authority under the Act; a status report regarding country tiering and the Control List; a description of mass market and foreign availability determinations, and foreign availability negotiations; descriptions of enforcement actions taken and sanctions imposed; and a detailed statistical summary of all applications and notifications received pursuant to the Act.

The Title also directs the Secretary to notify the Congressional committees of jurisdiction whenever a violation of the Act poses a direct and imminent threat to national security.

Any publication in the Federal Register required by the Act is also to be made available on the Department of Commerce Internet website.

The Title contains provisions preserving delegations, rules, regulations, and other actions under a number of statutes that have governed export control policy.

Finally, the Act requires the Secretary to make revisions to the Export Administration regulations required by the Act within 180 days.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; Table of Contents

Section 1 provides that the bill may be cited as the “Export Administration Act of 1999.”

Section 2. Definitions

Section 2 defines the terms used in the Act. The Committee notes that the definition of “export” is intended to encompass current regulatory practice.

Section 101. Commerce control list

Section 101 directs the Secretary of Commerce to establish and maintain a Commerce Control List specifying the items that require a license or other authorization prior to export. Section 101(b) specifies the types of licenses or other authorization that can be required. Section 101(c) provides that no license or other authorization is required to provide after-market service or replacement parts, to replace on a one-for-one basis parts that were in an item lawfully exported from the United States, unless the Secretary determines that a license is required or the after-market service or replacement parts materially enhances the capability of the item. Section 101(d) provides that a license or other authorization to export an item includes authorization to export incidental technology related to the item.

Section 102. Delegation of authority

Section 102 allows the President to delegate any authority granted to him under this Act. Section 102(b)(1) limits this delegation to officials that are appointed by the President with the advice and consent of the Senate. Section 102(b)(2) states that the President may not delegate or transfer his authority to overrule or modify recommendations or decisions made by the Secretaries of Commerce, State, or Defense.

Section 103. Public information; consultation requirements

Section 103 requires the Secretary of Commerce to consult regularly with representatives from the private sector and to keep the public fully apprised of changes in export control policies and procedures.

Section 104. Right of export

Section 104 affirms that U.S. persons have the right to export, except as provided in this Act.

Section 105. Export control advisory committees

Section 105 authorizes the Secretary of Commerce to appoint export advisory committees, made up of representatives from industry and government, to provide technical advice and assistance to the Department of Commerce and other appropriate departments regarding export control policy.

Section 106. Prohibition on charging fees

Section 106 provides that no fee may be charged to process an export license under this Act.

Section 201. Authority for National security export controls

Section 201 authorizes the President to control exports for national security purposes to stem contributions to the military capability of potential adversaries; to stem the proliferation of weapons of mass destruction, chemical and biological weapons, or missile delivery systems; and to deter acts of international terrorism. Section 201(c) authorizes export controls on items that, based on the end use or end user, could materially contribute to the proliferation of weapons of mass destruction.

Section 202. National security control list

Section 202 requires the Secretary of Commerce to establish and maintain a National Security Control List. The Secretary identifies items to be included on the List, with the concurrence of the Secretary of Defense, and in consultation with other appropriate agencies. Section 202(b)(1) requires the Secretary of Commerce to balance the national security risks of not controlling the export of an item against the economic cost of controlling the item, when establishing and maintaining the List. Section 202(b)(2) specifies certain risk factors that the Secretary must consider when establishing and maintaining the List.

Section 203. Country tiers

Section 203 directs the President to establish a country tiering system within a risk management framework. The President must assign each country to one of five tiers for each controlled item or group of items. Countries that represent the lowest risk of diversion or misuse of an item are assigned to Tier 1; those representing the highest risk of diversion or misuse are assigned to Tier 5. Section 203(c) provides a number of risk factors to be used by the President in making this determination.

Section 204. Incorporated parts and components

Section 204 provides that controls may not be placed on an item solely because the item incorporates parts or components that are controlled, if the part or component is valued at 25 percent or less of the total value of the item and is essential to the functioning of the item, unless the export would prove detrimental to the national security of the U.S. Section 204(b) provides that no authority may be required for the re-export of foreign-made items incorporating U.S. controlled items if the U.S. controlled item is 25 percent or less of the total value of the item, or 10 percent or less for re-export to countries designated as terrorist countries under section 310.

Section 205. Petition process for modifying export status

Section 205 directs the Secretary of Commerce to establish a process for interested persons outside of the Government to petition for changes to the control list.

Section 211. Determination of foreign availability and mass market status

Section 211 directs the Secretary of Commerce to review and determine the foreign availability and mass market status of an item on a continuing basis, upon a request from the Office of Technology Evaluation, or in response to a petition. Section 211(c) provides that in any case in which the Secretary determines that an item has foreign availability or mass-market status, no license or other authorization shall be required for the export of such item, subject to a determination by the President in section 212 or 213. This section also amends section 1211(d) of the National Defense Authorization Act for Fiscal Year 1998 to allow for a 60-day review period for Congress to review presidential changes to the level of controlled computer speed. Section 211(d) establishes the criteria the Secretary must consider in making such determination.

Section 212. Presidential set-aside of foreign availability determination

Section 212 authorizes the President to set aside a foreign availability determination if failing to control the item would be detrimental to U.S. national security and such foreign availability is likely to be eliminated through negotiations with other countries. The President must report to Congress and publish notice in the Federal Register whenever a foreign availability determination is set aside. Section 212(b) provides that the presidential set-aside shall expire if negotiations are never commenced, negotiations end without success or, in any event, 18 months after the determination if the President has been unable to eliminate foreign availability through negotiations. Upon the expiration of a presidential set-aside, no license or other authorization shall be required to export the item.

Section 213. Presidential set-aside of mass-market status determination

Section 213 authorizes the President to set aside a mass-market status determination if failing to control the item constitutes a serious threat to U.S. national security and controlling the item would likely diminish the threat. Section 213(b) provides the President must publish a set-aside determination in the Federal Register and review the set-aside determination every six months. The President must report to Congress on each review.

Section 214. Office of technology evaluation

Section 214 establishes, in the Department of Commerce, an Office of Technology Evaluation to gather information and conduct assessments on whether items are available to controlled countries from a foreign source or on a mass market basis. Section 214(b) directs the Office to conduct a number of assessments, including one on the cost and effectiveness of export controls in light of continuing technical developments. All government departments and agencies are directed to share information with the Office.

Section 301. Authority for foreign policy export controls

Section 301 authorizes the President to control exports for the purposes of promoting foreign policy objectives; promoting peace, stability and respect for human rights; and deterring and punishing acts of international terrorism. This authority is to be exercised by the Secretary of Commerce, Secretary of State, and other departments and agencies deemed appropriate. Section 301(c) prohibits controlling for foreign policy reasons, the export from a foreign country of an item containing parts or components produced in the United States. Section 301(d) prohibits controlling the export of an item for foreign policy purposes if the export of such item is in performance of a binding contract, unless the export of such item would constitute a serious threat to a foreign policy interest of the United States.

Section 302. Procedures for imposing controls

Section 302 outlines the procedures the President must follow in order to impose export controls for foreign policy reasons. Section 302(a) requires notice to be given 45 days prior to the imposition of a foreign policy control to allow time for public comment. Section 302(b) authorizes the President to negotiate with the government of the foreign country against which the export control is imposed. Section 302(c) directs the President to consult with Congress, prior to imposing a control.

Section 303. Criteria for foreign policy export controls

Section 303 outlines the criteria that the President must follow when imposing export controls for foreign policy purposes.

Section 304. Presidential report before imposition of controls

Section 304 directs the President to submit a report to Congress prior to imposing a foreign policy export control. Section 304(b) details the contents of such report.

Section 305. Imposition of controls

Section 305 authorizes the President to impose a foreign policy export control after the report required under section 304 is sent to Congress and notice is published in the Federal Register.

Section 306. Deferral authority

Section 306 authorizes the President to impose a foreign policy control prior to satisfying the notice (section 302(a)) and reporting requirements (section 304) if deferral of compliance with these requirements is in the national interest, provided the requirements are satisfied within 60 days.

Section 307. Review, renewal, and termination

Section 307(a) provides that export controls imposed under Title III shall terminate on March 31 of each renewal year unless specifically renewed by the President. The term “renewal year” is defined as the year 2002 and every two years thereafter. Except that this rule does not apply to those export controls required by law, those targeted against any country designated as a country supporting international terrorism under Section 310, or has been in

effect for less than one year as of February 1 of a renewal year. Section 307(b) requires the President to consult with Congress and solicit public comment by publishing notice in the Federal Register during any review period. Section 307(c) requires the President to report to Congress on any export control he wishes to renew and describes the contents of such report. Any control not specifically renewed by the President at the time of review shall be terminated.

Section 308. Termination of controls under this title

Section 308 requires that the President terminate any foreign policy control that has failed to achieve its objective. The section also authorizes the President to terminate any foreign policy export control not required by law at any time. Section 308(b) provides that the President may not terminate export controls imposed against countries designated under section 310 as supporting international terrorism.

Section 309. Compliance with international obligations

Section 309 authorizes the President to control exports in order to comply with United Nations' resolutions, treaties, or other international agreements and arrangements, notwithstanding any other provision of the Act.

Section 310. Designation of countries supporting international terrorism

Section 310 provides criteria by which the Secretary of State shall determine whether a country has repeatedly provided support for international terrorism. Section 310(a) provides that a license is required for the export of items to countries so designated. Section 310(b) requires the Secretary of State to notify Congress at least 30 days before issuing a license to export to a terrorist country. Section 310(d) provides that a designation made under this section shall not be rescinded until and unless the President submits a report to Congress and details the contents of such report.

Section 401. Exemption for agricultural commodities, medicine, and medical supplies

Section 401 provides that foreign policy export controls shall not apply to agricultural commodities, medicine, and medical supplies.

Section 402. Termination of export controls required by law

Section 402 directs the President to terminate any export control on agricultural commodities, medicine, and medical supplies required by law upon the date of enactment of the Act, unless specifically reimposed by law.

Section 403. Exclusions

Section 403 provides that sections 401 and 402 do not apply to controls imposed on agricultural commodities, medicine and medical supplies for national security reasons or controls imposed against countries against which an embargo is in effect under the Trading With the Enemy Act.

Section 501. Export license procedures

Section 501 provides the process by which export license applications are considered by the Secretary of Commerce and other departments and agencies. Section 501(a)(4) provides the criteria for consideration of applications. Section 501(b) requires that the Secretary of Commerce review all applications for completeness and refer such applications to the Department of Defense, and other appropriate agencies, within 9 days. Section 501(c) requires that referral agencies respond with a recommendation on the application within 25 days of referral. Any referral agencies may notify the Secretary of Commerce of additional information needed from the license applicant. Section 501(d) provides that not later than 25 days after the date the application is referred, the Secretary shall, if agreement exists among the referral agencies, issue the license and notify all appropriate personnel in the Department of Commerce, or notify the applicant of the intention to deny the license. All matters on which agreement does not exist among the departments and agencies are referred to the interagency dispute resolution process. Section 501(e) requires the Secretary, in the event a determination is made to deny a license, to inform the applicant of the statutory and regulatory basis for the denial; what, if any, modifications to the license would allow it to be approved; and the availability of appeal procedures. The applicant is allowed 20 days to cure the deficiencies of the application. Section 501(f) directs the Secretary of Commerce to establish a process by which applicants can appeal the denial of an application. It also authorizes the filing of a petition with the Secretary of Commerce and the filing of an action in United States District Court, to enforce the time limits proscribed in this section. Section 501(g) details certain actions that are not to be included in the time periods prescribed in the section. Section 501(h) requires the Secretary of Commerce to notify the Secretary of Defense and other appropriate agencies of classification requests under this title, and requires the Secretary of Commerce to respond to the person making the request within 14 days.

Section 502. Interagency dispute resolution process

Section 502 details the escalation procedure for reviewing license applications in the event an interagency agreement cannot be reached at the initial level of consideration. Section 502(b) provides that the Department of Commerce representative has the authority to make a decision on the license application at the first level of review, but allows any representative of a department or agency that participated in the interagency committee to escalate the decision to the next highest level of review. The section provides for decisions to be made by majority vote at the next levels of review, but allows any member of the review committee to appeal the decision. All matters must be resolved or referred to the President within 90 days of the date on which the application was referred to the various departments and agencies.

Section 601. International arrangements

Section 601 encourages the President to participate in multilateral export control regimes to increase the effectiveness and trans-

parency of export controls. Section 601(b) requires that an annual report be sent to Congress evaluating the effectiveness of each multilateral export control regime and detailing efforts to strengthen and harmonize the controls of such regimes. Section 601(c) directs the President to establish certain features in any multilateral export control regimes in which the United States is a member. Section 601(d) directs the President to seek the cooperation of regime members in establishing certain features in the members' national export control systems. Section 601(f) requires the Secretary of Commerce to publish information on export control regimes in which the United States is a member, not later than 120 days after the date of enactment of the Act. Whenever the United States joins a new regime, the Secretary shall publish information regarding such regime within 60 days. Section 601(g) encourages the Secretary of Commerce to assist and support the export control systems of other countries.

Section 602. Foreign boycotts

Section 602 directs the President to issue regulations prohibiting the participation of U.S. persons in boycotts imposed by a foreign country against a country that is friendly to the United States.

Section 603. Penalties

Section 603 increases the penalties for violations of this Act. Section 603(a) provides that criminal penalties can be assessed up to the greater of \$10 million, or 10 times the value of the export, for corporations and up to the greater of \$1 million, or 10 times the value of the export, for individuals. Individuals can be imprisoned for up to 10 years, which can be increased to life imprisonment for multiple violations or other aggravated circumstances. Section 603(b) authorizes the Secretary of Commerce to require forfeitures of property for violations of the Act. Section 603(c) provides that civil penalties can be assessed up to the greater of \$1 million, or 10 times the value of the export. The Secretary can also deny a person's export privileges and exclude them from certain practices for violations of the Act.

Section 604. Multilateral export control regime violations sanctions

Section 604 directs the President to impose sanctions on foreign entities that endanger U.S. national security by violating multilateral export control regimes. Section 604(c) authorizes exceptions from the imposition of sanctions in limited circumstances.

Section 605. Missile proliferation control violations

Section 605 requires the President to impose sanctions on persons that contribute to the proliferation of missiles and items on the Missile Technology Control Regime (MTCR) Annex. Section 605(a)(3) authorizes the President to waive the imposition of sanctions in limited circumstances.

Section 606. Chemical and biological weapons proliferation sanctions

Section 606 requires the President to impose sanctions on persons who contribute to the proliferation of chemical or biological

weapons, or their development. Section 606(c)(2) authorizes the President to waive the imposition of sanctions in limited circumstances.

Section 607. Enforcement

Section 607 provides various authorities to effectively enforce the export control requirements set forth in the bill. While the general enforcement provisions mirror those set forth in the Export Administration Act of 1979, several provisions are new to this Act. Section 607(g) targets post-shipment verifications to those exports involving the greatest risk to national security. Any end-user refusing a post-shipment verification will be denied future exports of any controlled item. The Secretary of Commerce is authorized to deny the export of a controlled item to any end-user within a country refusing a post-shipment verification of that same item. The mandatory post-shipment verification of exports of high-performance computers exceeding a speed of 2000 million theoretical operations per second, contained in Section 1213 of the National Defense Authorization Act for Fiscal Year 1998, is repealed. Section 607(h) authorizes awards to persons providing information of violations of the Act. Section 607(i) authorizes \$3.5 million to conduct a freight forwarder's best practices program. Section 607(j) authorizes \$4.5 million and 10 additional overseas investigators to increase post-shipment verifications. Section 607(m) authorizes \$5 million for an export licensing and enforcement computer system.

Section 608. Administrative procedures

Section 608 describes the administrative provisions for execution of authorities under this Act.

Section 701. Export control authority and regulations

Section 701 designates the Secretary of Commerce and the Under Secretary of Commerce for Export Administration to carry out the provisions of the Act. Section 701(b)(2) authorizes the appointment of an Assistant Secretary for Export Administration and Assistant Secretary for Export Enforcement to carry out their respective duties.

Section 702. Confidentiality of information

Section 702 protects the confidentiality of proprietary information associated with the processing of license applications. Section 702(b) authorizes Congress and the General Accounting Office to obtain information from appropriate departments and agencies regarding activities conducted in the furtherance of the Act. Section 702(d) provides that criminal penalties up to \$50,000, and one year imprisonment, can be imposed on officers or employees of the United States for knowingly disclosing information in violation of the Act. Civil penalties up to \$5,000 can be imposed on individuals for otherwise disclosing confidential information in violation of the Act.

Section 801. Annual and periodic reports

Section 801 directs the Secretary of Commerce to submit to Congress, prior to February 1 of each year, a report to Congress on the

administration of this Act. Section 801(b) details the specific items to be included in the report. Section 801(c) requires the Secretary of Commerce to notify Congress whenever the Secretary determines that a significant violation of the Act poses a direct and imminent threat to the national security interests of the United States, consistent with the protection of law enforcement activities. Section 801(d) provides that whenever information under the Act is required to be published in the Federal Register, such information also be made available on the Department of Commerce Internet website.

Section 802. Technical and conforming amendments

Section 802 lists the Act's technical and conforming amendments.

Section 803. Savings provisions

Section 803 provides that this Act does not affect administrative or judicial proceedings commenced under the previous authorizing Act, the Export Administration Act of 1979, or Executive Order 12924. Section 802(c) provides that determinations made under Section 6(j) of the Export Administration Act of 1979, or Executive Order 12924, that is in effect on the date of enactment of this Act, shall be deemed to be made under Section 310 of this Act. Section 802(d) requires the Secretary of Commerce to make any revisions to current regulations required under this Act no later than 180 after the date of enactment of this Act.

CHANGE IN EXISTING LAW (CORDON RULE)

In the opinion of the Committee, it is necessary to dispense with the requirements of paragraph 12 of the rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(g), XXVI of the Standing Rules of the Senate, the Committee makes the following statement regarding the regulatory impact of the bill.

This bill reauthorizes the Export Administration Act of 1979, which lapsed in 1994 and, in the interim, has been implemented by executive order. The bill retains the basic structure of U.S. export control law established in the 1979 Act. The bill also continues the current licensing process, in most all respects, and the requirements placed on exporters of controlled items.

However, the bill also increases the transparency and certainty of the licensing process, reducing burdens on exporters. Further, the bill strengthens the foreign availability provisions of the 1979 Act and adds a mass market provision, which may result in controls being lifted on some items.

The bill streamlines the regulatory process by requiring coordination and information-sharing between the various Federal departments and agencies.

For these reasons, the Committee believes that this legislation will have a favorable regulatory impact.

COST OF THE LEGISLATION

Senate rule XXVI, section 11(b) of the Standing Rules of the Senate, and Section 403 of the Congressional Budget Impoundment and Control Act, require that each committee report on a bill contain a statement estimating the cost of the proposed legislation, prepared by the Congressional Budget Office. This statement has been requested from the Congressional Budget Office, but it was not available at the date of filing of this report. When the information is made available to the Committee, it will be placed in the Congressional Record.

ADDITIONAL VIEWS OF SENATOR MACK

A clear and concise policy on the export of sensitive technology is clearly in the national interest. I agree it is very important to continue working to move this bill forward. This is not only because American businesses looking to export technology abroad need to know the rules, but also because the Executive branch needs effective tools safeguard our national security and protect our national interests.

I think it is important to remember why the current system doesn't work and the goals we had in mind after the release of the Cox report earlier this year. We set out to develop a simpler, more effective, process that gave technology to our allies and friends and withheld it from our enemies. And we wanted to ensure our own national security was better protected after the documented leaks of dual-use technology that were allowed under the present system.

While the print before us has made progress on both these points, in my view it still falls short of the mark. Let me outline, briefly, my major concerns.

First, the Department of Commerce remains the predominant agency in the export evaluation process. This concerns me because of this agency's inherent conflict of interest. We cannot reasonably expect an export promotion agency to fairly or competently evaluate matters of national security. And recently released performance evaluations of the Department's current enforcement capabilities call into serious question whether this is the agency we want to put in charge of policing the export of dual-use technology. I appreciate the enhanced role for the Department of Defense in this bill. In my view this should be significantly strengthened before we consider this legislation on the floor.

My other major concern is about the foreign policy export control section of the bill. This section states that the administration must have specific objectives for implementing the controls, do rigorous cost/benefit analysis on each control, and remove the controls after two years if the "objectives" have not been met. I believe this eliminates the ability of the Executive to implement conscience-based controls on the export of sensitive items to outlaw regimes. This portion of the bill also needs some work as this bill moves through the process.

I appreciate the hard work that has gone into drafting the print reported by the Committee. I look forward to continuing discussions with the sponsors and others to ensure the bill takes into account my concerns.

CONNIE MACK.